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Supreme Court, U.S.  
FILED

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JOSEPH F. SPANIOL, JR.  
CLERK

No. \_\_\_\_\_

In The  
**Supreme Court of the United States**

October Term, 1987

— o —  
WALTER C. EWERS,

*Petitioner,*

vs.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF CURRY,

*Respondent.*

— o —  
**SUPPLEMENT TO  
PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

— o —  
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November 6, 1987



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Petitioner Walter C. Ewers, pursuant to Rule 22.6 of the Rules of the Supreme Court of the United States, hereby supplements the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, dated May 12, 1987 as follows:

The Petition for Writ of Certiorari, dated May 12, 1987 and seeking review of the decision of the court of appeals on the first amendment issues subject of the appeal-in-chief in No. 84-2437 (10th Cir. 1986) was timely delivered to this Court for filing on that date. *See*, Affidavit of Certificate of Service of Philip B. Davis, of record herein. The Clerk of this Court declined to accept the Petition for filing at that time because it was not clear on its face that the Order of the court of appeals denying

rehearing in No. 84-2437 (10th Cir. 1986) was a final order from which a Petition for Writ of Certiorari could be taken. *See, e.g.*, Order of March 13, 1987 (App. B to Petition for Writ of Certiorari, App. 18).<sup>1</sup>

On October 29, 1987, the court of appeals granted petitioner's motion for clarification and thereby amended its March 13, 1987 Order

to show that the Court denied rehearing with regard to the appeal in No. 84-2437 and granted rehearing solely on the property interest issue raised by the cross-appeal in case No. 84-2477.

*Ewers v. Board of County Commissioners of the County of Curry*, Nos. 84-2437 and 84-2477 (10th Cir. October 29, 1987) (App. A, App. 2).

The Petition for Writ of Certiorari seeks this Court's review solely of the first amendment protected speech issues subject of the appeal-in-chief in No. 84-2437 (10th Cir. 1986), which the court of appeals' Order of October 29, 1987 makes expressly clear was the subject of that court's denial of rehearing, and was final for purposes of invocation of the jurisdiction of this Court upon entry of the court of appeals' March 13, 1987 Order. *See, e.g.*, Petition for Writ of Certiorari, at 7-16. The cross-appeal in No. 84-2477, the sole subject of which is petitioner's property interest claim, is a separate case pending before the court of appeals on rehearing and is not before this Court or in any way the subject of the Petition for Writ of Certiorari. *Ewers v. Board of County Commissioners of the County*

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<sup>1</sup> The court of appeals' Order, in addition to denying rehearing in No. 84-2437, granting limited rehearing on petitioner's cross-appeal in No. 84-2477 (10th Cir. 1986) on another issue not before this Court.

of *Curry*, Nos. 84-2437 and 84-2477 (10th Cir. October 29, 1987) (App. A, App. 1-2).

The Petition for Writ of Certiorari, dated May 12, 1987 seeking review of the court of appeals' decision in No. 84-2437, was timely presented to this Court for filing. Based on the court of appeals' Order of March 13, 1987 as amended by the Order of October 29, 1987, the Petition is properly before this Court for its review and accordingly, upon receipt of this Supplement to Petition for Writ of Certiorari, the Clerk of this Court has informed undersigned counsel that the Petition will be accepted for filing and given a case number in this Court.

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### CONCLUSION

For the reasons set out therein, the Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Tenth Circuit in that court's appeal No. 84-2437 should be granted.

Respectfully submitted,

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**APPENDIX A**

[10th Cir. Opinion]

SEPTEMBER TERM—October 29, 1987

Before Honorable William J. Holloway, Jr., Chief Judge,  
Honorable James E. Barrett, Circuit Judge, and Honorable  
David R. Sam, District Judge\*

WALTER C. EWERS,	)	
	)	
Plaintiff-Appellee,	)	
Cross-Appellant,	)	
	)	Nos. 84-2437 and
JACK JETER,	)	84-2477
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BOARD OF COUNTY COMMIS-	)	
SIONERS OF THE COUNTY	)	
OF CURRY, et al.,	)	
	)	
Defendants-Appellants,	)	
Cross-Appellees.	)	

This matter comes on for consideration of the motion of appellee/cross-appellant, Walter C. Ewers, for clarification of the court's order granting limited rehearing in the captioned cases. The court also has a response to that motion and Ewers' reply.

Upon consideration whereof, the court grants the motion for clarification and amends its order of March 13,

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\* of the United States District Court for the District of Utah, sitting by designation.

App. 2

1987 to show that the court denied rehearing with regard to the appeal in No. 84-2437 and granted rehearing solely on the property interest issue raised by the cross-appeal in case No. 84-2477.

/s/ Robert L. Hoecker  
Clerk

